IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7811 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHUPATBHAI ARJANBHAI PADHIYAR

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 4

MS PJ DAWAVALA for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 13/09/2000

C.A.V.JUDGEMENT

1. The petitioner has filed the present petition under Articles 21, 22 and 226 of the Constitution of India challenging the order of his detention dated

1.6.2000 recorded by the second respondent in exercise of powers conferred on him by Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. On receiving the petition, rule was issued and Mr. S.K.Patel, learned AGP appeared for State. I have heard learned advocates for the parties and have perused the papers. Mr. Patel, learned AGP has submitted affidavit in reply of Mr. P.R.Shukla, Deputy Secretary to Government Food, Civil Supplies and Consumer Affairs Department, Gandhinagar which may be taken on record.

3. The petitioner has challenged the order of detention on various grounds. One of the contentions is that the petitioner has submitted written representation and it was sent to the Jail Authority for onward transmission to the District Magistrate, Junagadh. It has been contended that he said Jail Authority has not forwarded the same to the District Magistrate, Junagadh and, therefore, the petitioner has lost valuable right of making effective representation to the District Magistrate, Junagadh against his detention.

4. If we refer to page 21(B) it can be gathered that it is a postal acknowledgment signed by the Jail Superintendent at Bhuj on 3.8.2000 which shows that Jail Authority has received the post on 3.8.2000. Then page 21(C), is the copy of the representation dated 31.7.2000 addressed by the petitioner to the District Magistrate, Junagadh. Therefore, it is clear that this representation was sent to the District Magistrate, Junagadh through the Jail Authority on 31.7.2000. Copy of the representation shows submission of representation and postal acknowledgment page 21(B) shows that it was received by the Jail Superintendent, Bhuj. We have affidavits, filed by the District Magistrate, Junagadh as well as Deputy Secretary to Government Food, Civil Supplies and Consumer Affairs Department, Gandhinagar and there is no mention about the aforesaid representation of the petitioner. This shows that the petitioner's representation was not forwarded by the Jail Authority to the District Magistrate, Junagadh nor it was forwarded to the Government. The Jail Authority cannot retain it with him. It would be relevant to observe that the Jail Superintendent, Bhuj - respondent no.4 before this Court has been served with the notice with copy of the petition. Therefore, he is aware of the allegations made in the petition, yet, no affidavit has been filed by the Jail Superintendent, Bhuj nor it has been shown as to

what happened to the said representation. It is not on record that any such representation was not received. There is nothing on record to show that the aforesaid postal acknowledgment was not signed by the Jail Superintendent. There is nothing on record to show that the aforesaid post did not contain representation of the petitioner. Any way, there is material to show that the representation was submitted to the District Magistrate, Junagadh through Jail Suprintendent, Bhuj and the Jail Superintendent does not appear to have forwarded it to the District Magistrate, Junagadh. If the representation is not forwarded then naturally District Magistrate, Junagadh could not decide the same. This shows that the representation submitted by the petitioner has not been considered at all. As said above, the valuable right of the petitioner of making effective representation has been taken away. He has also right to see that the representation is effectively considered by the appropriate authority. Since the representation did not reach the appropriate authority, the same has not been considered and, therefore, the petitioner has lost valuable right of being considered against his detention. In that view of the matter, when the said right of the petitioner has been taken away, the petitioner could not be detained and detention order cannot be sustained. In the aforesaid view of the matter, the order of detention of the petitioner is illegal inasmuch as his representation has not at all been considered by the authority and hence same is required to be quashed and set aside. Therefore, the order of the detention of the petitioner is illegal and deserves to be quashed and set aside.

6. For the reasons stated above, this petition is required to be allowed and the order of detention is required to be set aside. Therefore, the present petition is allowed and the order of detention passed by the District Magistrate, Junagadh against the petitioner on 1.6.2000 placed at Annexure-A to the petition is ordered to be quashed and set aside. The petitioner abovenamed shall be released forthwith, if not required in any other case. Rule made absolute with no order as to costs. Direct service is permitted.

(D.P.Buch,J)

(vipul)